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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,547	02/24/2004	Keith Patrick Heaton	COO.441A.US	8146

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LEGAL DEPARTMENT INTELLECTUAL PROPERTY
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EXAMINER

GIBSON, ROY DEAN

ART UNIT PAPER NUMBER

3739

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/785,547	Applicant(s) HEATON ET AL.	
	Examiner Roy D. Gibson	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1,3,9,14,15,22 and 23 is/are rejected.
- 7) ☒ Claim(s) 4-8,10-13 and 16-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Formal Matters

In view of new prior art found by the examiner, the finality of the Office action of 19 June 2006 is withdrawn and prosecution is reopened.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 depends from canceled claim 2. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Kotliar (5,974,222). Kotliar discloses an apparatus comprising:

a pressurized air source (part of a conventional refrigeration system);
a framework of inflatable tubes (12 and 13) in fluid connection with the
pressurized air source;

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a patient-enclosing air tent (11) mounted on the framework of inflatable tubes, the inflatable tubes being operable, when inflated, to support the air tent above the patient;

an air-cooling system (part of a conventional refrigeration system) to provide cold air to the interior of the patient-enclosing air tent, the cold air to affect a core temperature of the patient; and

an outlet connected to the air-cooling system for re-circulating air from the air tent back to the air-cooling system to conserve energy (col. 1, line 61-col. 2, line 32).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 9 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kotliar in view of Heck et al. (5,097,548). Kotliar discloses all elements of the invention except that the air-tent is sized to enclose at least a portion of the patient except a head portion. But, Heck et al. discloses a similar air tent for cooling a patient which is sized to enclose at least a portion of the patient except a head portion and having an outlet to the air-cooling system for re-circulating air from the tent back to the air-cooling system (Figure 1 and col. 4, line 59-col. 5, line 7 and col. 9, lines 8-34).

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Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Kotliar, as taught by Heck et al., to provide a modified air tent to not enclose the head of the patient as required by the specific treatment and to have the ability to re-circulate air from the tent back to the air-cooling system.

Further to claim 9, the examiner maintains that it would have been obvious to a skillful artisan to provide the necessary inflatable connectors to releasably secure the framework in the closed position.

Further to claims 3 and 23, the examiner maintains that it would have been obvious to a skillful artisan to provide the re-circulation from the air tent back to the air-cooling system via a coaxial hose because this configuration is well known in the art to provide a mechanically efficient configuration and to provide pre-cooling of the returning air resulting in an overall cooling efficiency.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kotliar in view of Tomic-Edgar et al. (6,245,096). Kotliar fails to disclose a plurality of transparent windows in the tent. However, Tomic-Edgar et al. disclose a thermal cover for delivering fluid to a patient wherein the canopy has transparent windows to permit observation of the patient as required (Figure 6 and col. 2, lines 18-51). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Kotliar, as taught by Tomic-Edgar et al, to permit observation of the patient during the procedure.

Allowable Subject Matter

Claim 21 is allowed.

Claims 4-8, 10-13 and 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wayman (4,736,762) discloses an anti-contamination system with inflatable supports of a tent like structure what contains multiple windows (27)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Roy D. Gibson
Primary Examiner
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July 19, 2006